

Clerk Commentary

By UNA M. O'BOYLE

Amended Rules of Bankruptcy Procedure Effective Dec. 1, 2022

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Several new amendments to the Federal Rules of Bankruptcy Procedure are set to become effective Dec. 1, 2022. Twelve rules were amended and one new rule was created in response to the Small Business Reorganization Act of 2019 (SBRA)¹ (Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3018, 3019 and new Rule 3017.2). Four additional rules (Rules 3002(c)(6), 5005, 7004 and 8023) were also amended.

The SBRA-Related Rule Amendments

On Aug. 23, 2019, President Donald Trump signed the SBRA into law, which created a new subchapter V of chapter 11 for the reorganization of small business debtors. The SBRA's enactment required amendments to be made to a number of bankruptcy rules and forms, in some cases excepting subchapter V cases from provisions that apply generally to chapter 11 and in other cases, making provisions expressly applicable to subchapter V cases.

On Dec. 16, 2019, the Executive Committee of the Judicial Conference authorized the distribution of interim rules and forms to the courts so they could be adopted locally prior to the Feb. 19, 2020, effective date of the SBRA. The purpose of the interim rules and forms was to facilitate uniformity of practice until the Bankruptcy Rules and Official Forms could be revised in accordance with the Rules Enabling Act. As part of that process, the amended and new rules were published for comment in 2020, along with the SBRA form amendments. No comments were submitted on the SBRA rules and forms in response to publication.

Rule 1007: Lists, Schedules, Statements and Other Documents; Time Limits

Subdivision (b)(5) of the amended rule includes an exception for subchapter V cases. Because § 1129(a)(15)² of the Bankruptcy Code is inapplicable to such cases, an individual debtor in a subchapter V case does not need to file a statement of current monthly income.

Subdivision (h) of the rule has been amended to provide that the duty to file a supplemental schedule under the rule terminates with the discharge of the debtor upon confirmation of the plan under § 1191(a) or thereafter if the plan is confirmed under § 1191(b).

Rule 1020: Chapter 11 Reorganization Case for Small Business Debtors

The amended rule requires a small business debtor to state in its voluntary petition, or in a statement filed within 14 days after the order for relief is entered in an involuntary case, whether it elects to be a debtor under subchapter V. Former subdivision (c) of the rule has been deleted.³ Former subdivision (d) has been redesignated as subdivision (c), and the list of entities to be served was revised to reflect that in most small business and subchapter V cases, there will not be a committee of creditors.

Rule 2009: Trustees for Estates When Joint Administration Ordered

Subdivisions (a) and (b) of the rule have been amended to except cases under subchapter V from their coverage because § 1183 of the Bankruptcy Code requires the U.S. Trustee to appoint a trustee in a subchapter V case. Subdivision (c)(2), which addresses the appointment of trustees in jointly administered chapter 11 cases, has been amended to make it applicable to cases under subchapter V.

Rule 2012: Substitution of Trustee or Successor Trustee; Accounting

Rule 2012(a) has been amended to include any case under subchapter V in which the debtor is removed as a debtor in possession (DIP) under § 1185 of the Bankruptcy Code.

Rule 2015: Duty to Keep Records, Make Reports and Give Notice of Case or Change of Status

Rule 2015(b) has been amended to prescribe the duties of a DIP, trustee and debtor in a subchapter V case. Those cases are excepted from subdivision (a) because unlike other chapter 11 cases, there will generally be both a trustee and DIP. Former subdivisions (b), (c), (d) and (e) were redesignated (c), (d), (e) and (f), respectively.



Coordinating Editor
Una M. O'Boyle
U.S. Bankruptcy Court
(D. Del.); Wilmington

Una O'Boyle is the clerk of the U.S. Bankruptcy Court for the District of Delaware in Wilmington and the former chief deputy of the U.S. Bankruptcy Court for the Southern District of New York.

¹ Pub. L. 116-54, 133 Stat. 1079 (Aug. 26, 2019).

² See § 1181 of the Bankruptcy Code.

³ The SBRA eliminated that portion of the definition of "small business debtor" in § 101(51D) of the Bankruptcy Code that referred to the existence or level of activity of a creditors' committee.

Rule 3010: Small Dividends and Payments in Cases Under Chapter 7 Liquidation, etc.

The rule, which also includes subchapter V of chapter 11, chapter 12 (family farmers) debt adjustment and chapter 13 (individual's debt-adjustment cases), has been amended to include subchapter V cases to avoid the undue cost and inconvenience of distributing small payments.

Rule 3011: Unclaimed Funds in Chapter 7 Liquidation, etc.

The rule, which also includes subchapter V of chapter 11, chapter 12 (family farmers) debt adjustment and chapter 13 (individual's debt-adjustment cases), has been amended to include subchapter V cases.

Rule 3014: Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

The rule has been amended to provide that the court fix a deadline for making an election under § 1111(b) in subchapter V cases because there generally will not be a disclosure statement by which to set the deadline.⁴

Rule 3016: Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

Rule 3016(b) has been amended to reflect that under § 1181(b) of the Bankruptcy Code, § 1125 does not apply to subchapter V cases (and thus a disclosure statement is not required) unless the court for cause orders otherwise. Rule 3016(d) has been amended to include subchapter V cases as ones in which Official Forms are available for a reorganization plan and, when required, a disclosure statement.

Rule 3017.1: Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11

The title of Rule 3017 and subdivision (a) have been amended to cover subchapter V cases when the court orders that § 1125 of the Bankruptcy Code applies.

Rule 3017.2: Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement

Rule 3017.2 has been added to authorize the court in a subchapter V case to act at a time other than when a disclosure statement is approved to set certain times and dates (*see* § 1181(b) of the Bankruptcy Code).

Rule 3018: Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

Rule 3018(a) has been amended to take account of the court's authority to set times under Rules 3017.1 and 3017.2 in small business and subchapter V cases.

Rule 3019: Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

Rule 3019(c) has been added to govern requests to modify a plan after confirmation in subchapter V cases under § 1193(b) or (c) of the Bankruptcy Code.

The Non-SBRA-Related Rule Amendments

Rule 3002: Filing Proof of Claim or Interest

Former Rule 3002(c)(6) required a court to apply different standards to a creditor request to extend the deadline to file a claim depending on whether the creditor's address was foreign or domestic. The amended rule creates a uniform standard. In both situations, the court may grant an extension if it finds that the notice was "insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim."

Rule 5005: Filing and Transmittal of Papers

The amended rule allows papers required to be transmitted to the U.S. Trustee to be sent by filing with the court's electronic filing system in accordance with Rule 9036, and eliminates the requirement of proof of transmittal when the transmittal is made by that means. The amended rule also eliminates the requirement that statements evidencing transmittal filed under Rule 5005(b)(2) be verified.

The SBRA's enactment required amendments to be made to a number of bankruptcy rules and forms, in some cases excepting subchapter V cases from provisions that apply generally to chapter 11 and in other cases, making provisions expressly applicable to subchapter V cases.

Rule 7004: Process; Service of Summons, Complaint

The amendment to Rule 7004 adds a new subdivision (i) to clarify that service under Rule 7004(b)(3) or (h) may be made on an officer, managing or general agent, or other agent by use of their titles rather than their names, rejecting those cases interpreting Rule 7004(b)(3) and (h) in other ways.⁵ The comment to the rule provides that service to a corporation or partnership, unincorporated association or insured depository institution at its proper address directed to the attention of the "Chief Executive Officer," "President," "Officer for Receiving Service of Process," "Managing Agent," "General Agent," "Officer" or "Agent for Receiving Service of Process" (or other similar titles) is sufficient.

Rule 8023: Voluntary Dismissal

The amended rule conforms to the revised version of Appellate Rule 42(b) and clarifies that the fees that must be paid are court fees (not attorneys' fees) and that a court order is required for any action other than a simple voluntary dismissal of an appeal. The rule does not alter the legal requirements governing court approval of a settlement, payment or other consideration.⁶ **abi**

⁵ *Addison v. Gibson Equip. Co. Inc. (In re Pittman Mech. Contractors Inc.)*, 180 B.R. 454, 456-57 (Bankr. E.D. Va. 1995); *In re Schoon*, 153 B.R. 48 (Bankr. N.D. Cal. 1993).

⁶ *See, e.g., Fed. R. Bankr. P. 9019* (requiring court approval of compromise or settlement).

⁴ *See* § 1181(b) of the Bankruptcy Code.